

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§
New Procedures for Chapter 7 and Chapter 13	§
Motions for Relief from Stay Against Exempt	§
Property	§

**SOUTHERN DISTRICT OF TEXAS PROCEDURES FOR
CONSUMER MOTIONS FOR RELIEF FROM AUTOMATIC STAY**

1. **Procedures are Mandated.** Parties who file motions for relief from the stay on exempt residences and exempt vehicles in chapter 7 and chapter 13 cases (“Consumer Lift Stay Motions”) must comply with these procedures and must use the forms promulgated by the Court from time to time.

2. **Variances in Motions.** Variance from these procedures is allowed, if exceptional circumstances exist.

A. Exceptional circumstances include:

1. A motion for relief from the stay filed against a repeat filer for which the movant seeks relief other than a routine termination of the stay, and
2. A motion for relief from the stay on which there are disputes regarding the extent, validity, or priority of liens on the collateral that is the subject of the motion.

B. A party believing that are other exceptional circumstances justifying exemption from these procedures must allege the exceptional circumstances with particularity in the motion.

3. **Variances in Agreed Orders.** Variance from these procedures is allowed, if exceptional circumstances exist. When exceptional circumstances are alleged, the Court may conduct an evidentiary hearing at which time the exceptional circumstances must be demonstrated by a preponderance of the evidence.

4. **Must Confer Before Filing Motion.** Prior to filing a Consumer Lift Stay Motion, the movant must attempt to contact the debtor(s)’ counsel to discuss whether an agreement can be reached utilizing the Court’s agreed order forms. If such an agreement can be reached, the parties may submit a Motion for Entry of Agreed Order under FRBP 4001 (Form M-1). Submission of an order (Form O-2, O-4, O-5, or O-6) under such circumstances avoids the expense of preparing a motion for relief, the filing fee for a motion for relief, the expense of filing a response to the motion, and the expense of attending a hearing. Conferences may be attempted by telephone or by e-mail. If no response is received within 2 business days, the

motion may be filed without an actual conference. In all conferences, movant's counsel must provide a contact person with a direct telephone number for future discussions.

5. **Responses.** If the parties cannot reach agreement to submit an agreed order in the Court's format (i.e., Form O-2, O-4, O-5, or O-6), the party seeking relief from the stay may file a Consumer Lift Stay Motion in the Court's format (Form M-2) with a proposed form of order in the form of Form O-1. Responses must be one of the following and must be filed at least five days before the hearing:

A. Submission of an agreed order terminating the stay, utilizing the Form O-2. If an agreed order is filed in accordance with these procedures, the Court will usually issue the order prior to the hearing. Attendance at the originally scheduled hearing is not necessary, by either party. If the Court declines to issue the order, the Court will issue an order for further proceedings.

B. Submission of an agreed order conditioning the stay, utilizing the Court's Form O-4, O-5 or O-6. If an agreed order is filed in accordance with these procedures, the Court will usually issue the order prior to the hearing. Attendance at the originally scheduled hearing is not necessary, by either party. If the Court declines to issue the order, the Court will issue an order for further proceedings.

C. An answer or other response. Answers must comply with FRBP 9011. Responses must be based on reasonable investigation and must not be filed for delay or other improper purpose. A response stating that the debtor(s)' attorney has not been able to contact the debtor(s) or a general denial not based on reasonable investigation may not be sufficient to prevent default relief. If a timely response is filed, attendance at the hearing by both parties is required.

6. **Default May be Granted.** If a sufficient response has not been timely filed, the movant must submit a proposed form of default order with a certification of default. The proposed form of default order and certification must comply with the Court's Form O-3 as promulgated from time to time. The Court may issue a default order if an adequate response is not filed at least five days before the hearing. If the Court issues a default order prior to the hearing, counsel need not appear at the hearing. If the Court has not issued a default order and a party who has failed to respond appears at the hearing, the Court may nevertheless grant default relief or may set a date for an evidentiary hearing.

7. **Implementation.** These procedures and forms are mandatory for all motions filed after October 16, 2005. They may be used at any time prior to that.

Form M-1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

§
§

Case No.
(Chapter __)

MOTION FOR ENTRY OF AGREED ORDER CONDITIONING AUTOMATIC STAY [AND CO-DEBTOR STAY] REGARDING EXEMPT PROPERTY

THIS IS A MOTION FOR ENTRY OF AN AGREED ORDER CONDITIONING THE AUTOMATIC STAY. IF YOU OBJECT TO THE GRANTING OF RELIEF, YOU SHOULD CONTACT THE MOVANT IMMEDIATELY TO TRY TO REACH AN AGREEMENT. IF YOU CANNOT REACH AN AGREEMENT, YOU MUST FILE A WRITTEN RESPONSE AND SEND A COPY TO MOVANT WITHIN 15 DAYS OF THE DATE THIS WAS MAILED TO YOU. IF NO TIMELY OPPOSITION IS FILED, THE COURT MAY GRANT THE RELIEF WITHOUT A HEARING.

1. Movant: _____
2. Movant, directly or as agent for the holder, holds a security interest in [describe property. If real property, must list street address and legal description.]
3. The Debtor's exemptions _____ have _____ have not been allowed.
4. Type of collateral (e.g., Home, Manufactured Home, Car, Truck, Motorcycle): _____
5. Debtor's scheduled value of property: \$_____.
6. Movant's estimated value of property: \$_____.
7. Total amount owed to movant: \$_____.
8. Estimated equity (paragraph 6 minus paragraph 7): \$_____.
9. Total pre and post-petition arrearages: \$_____.
10. Total post-petition arrearages: \$_____.
11. Amount of unpaid, past due property taxes, if applicable: \$_____.
12. Expiration date on insurance policy, if applicable: _____.
13. Movant and Debtor [and co-debtor, if applicable] have agreed to condition the automatic stay pursuant to the terms of the attached agreed order. Accordingly, the parties request entry of the agreed order.

Date: _____

Movant's counsel

Certificate of Service and Certificate of Compliance with BLR 4001

A copy of this motion was served on the persons shown on exhibit "1" at the addresses reflected on that exhibit on [date] by prepaid United States first class mail. Movant certifies that movant has complied with Bankruptcy Local Rule 4001.

Movant's counsel

Form M-2
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

§
§

Case No.
(Chapter __)

MOTION FOR RELIEF FROM THE STAY [AND CO-DEBTOR STAY, IF APPLICABLE] REGARDING
EXEMPT PROPERTY

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF YOU OBJECT TO THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY, YOU SHOULD CONTACT THE MOVANT IMMEDIATELY TO TRY TO REACH AN AGREEMENT. IF YOU CANNOT REACH AN AGREEMENT, YOU MUST FILE A WRITTEN RESPONSE AND SEND A COPY TO MOVANT NOT LATER THAN [DATE] AND YOU MUST ATTEND THE HEARING. THE COPY SENT TO THE MOVANT MUST BE DELIVERED BY HAND OR ELECTRONIC DELIVERY IF IT IS SENT LESS THAN FIVE BUSINESS DAYS PRIOR TO THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE HEARING MAY BE AN EVIDENTIARY HEARING AND THE COURT MAY GRANT OR DENY RELIEF FROM THE STAY BASED ON THE EVIDENCE PRESENTED AT THIS HEARING. THE COURT WILL CONDUCT A HEARING ON THIS MOTION ON [DATE] AT [TIME] IN COURTROOM [ADDRESS].

1. Movant: _____
2. Movant, directly or as agent for the holder, holds a security interest in [describe property. If real property, must list street address and legal description.]
3. The Debtor's exemptions _____ have _____ have not been allowed.
4. Type of collateral (e.g., Home, Manufactured Home, Car, Truck, Motorcycle): _____
5. Debtor's scheduled value of property: \$_____.
6. Movant's estimated value of property: \$_____.
7. Total amount owed to movant: \$_____.
8. Estimated equity (paragraph 6 minus paragraph 7): \$_____.
9. Total pre and post-petition arrearages: \$_____.
10. Total post-petition arrearages: \$_____.
11. Amount of unpaid, past due property taxes, if applicable: \$_____.
12. Expiration date on insurance policy, if applicable: _____.
13. Debtor(s)' payment history is attached as exhibit "A", in the form required by Local Rule 4001(a)(6).
14. If applicable: Name of Co-Debtor: _____.
15. Based on the foregoing, movant seeks termination of the automatic stay [and the co-debtor stay, if applicable] to allow movant to foreclose or repossess the debtor(s)' property and seeks to recover its costs and attorneys' fees in an amount not to exceed the amount listed in paragraph 8.
16. Movant certifies that prior to filing this motion an attempt was made to confer with the Debtor(s)' counsel (or with Debtor(s), if *pro se*) by the following person on the following date and time: _____.

_____.

An agreement could not be reached.

Date: _____

Movant's counsel

Form M-2
Certificate of Service and Certificate of Compliance with BLR 4001

A copy of this motion was served on the persons shown on exhibit “1” at the addresses reflected on that exhibit on [date] by prepaid United States first class mail. Movant certifies that movant has complied with Bankruptcy Local Rule 4001.

Movant’s Counsel

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

§
§

Case No.
(Chapter __)

**ORDER GRANTING RELIEF FROM AUTOMATIC STAY [AND CO-DEBTOR STAY,
IF APPLICABLE] AFTER HEARING
[FORM SUBMITTED WITH ORIGINAL MOTION AND BROUGHT TO HEARING]
(This Order Resolves Docket # ____)**

_____ (“Movant”) filed a motion for relief from the automatic stay against [describe property. If real property, must list street address and legal description.] (the “Property”). Movant represented to the Court that it had served the motion in accordance with all applicable rules and provided notice of the hearing.

_____ Although a response opposing the motion was filed, the respondent did not appear at the hearing. Therefore, the response is overruled for want of prosecution and the motion is granted.

_____ After hearing, and for the reasons stated on the record, relief from the stay is granted.

_____ No timely response was filed. Accordingly, the motion is granted by default.

_____ As shown by Debtor(s)’ counsel signature below, Debtor(s) have agreed to the requested relief.

Accordingly, it is ordered that Movant is granted relief from the automatic stay [and the co-debtor stay] to pursue its state law remedies against the Property, including foreclosure, repossession and/or eviction.

Additional rulings:

_____ Movant is awarded attorneys fees in the amount of \$_____.

_____ The stay imposed by Bankruptcy Rule 4001(a)(3) does not apply for the reasons stated on the record.

ReservedForJudgeSignature

Approved by Debtor’s Counsel: _____
(signature)

Form O-2
**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

§
§

Case No.
(Chapter __)

**AGREED ORDER GRANTING RELIEF FROM AUTOMATIC STAY [AND THE CO-
DEBTOR STAY, IF APPLICABLE]
(This Order Resolves Docket # ____)**

_____ (“Movant”) filed a motion for relief from the automatic stay [and co-debtor stay] against [describe property. If real property, must list street address and legal description.] (the “Property”). Movant represented to the Court that it had served the motion in accordance with all applicable rules and provided notice of the hearing. As shown by Debtor(s)’ or Debtor(s)’ counsel signature below, Debtor(s) have agreed to the requested relief.

Accordingly, it is ordered that Movant is granted leave from the automatic stay [and the co-debtor stay, if applicable] to pursue its state law remedies against the Property, including repossession, foreclosure and/or eviction.

[OPTIONAL: The stay imposed by Bankruptcy Rule 4001(a)(3) does not apply.]

ReservedForJudgeSignature

Agreed:

DEBTOR(S) OR THEIR COUNSEL

Date: _____

CO-DEBTOR OR COUNSEL

Form O-3
**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

§
§

Case No.
(Chapter __)

**DEFAULT ORDER GRANTING RELIEF FROM AUTOMATIC STAY [AND CO-
DEBTOR STAY, IF APPLICABLE]
(This Order Resolves Docket #____)
[FORM TO BE FILED AT LEAST TWO BUSINESS DAYS BEFORE THE
SCHEDULED HEARING IF NO RESPONSE HAS BEEN FILED]**

_____ (“Movant”) filed a motion for relief from the automatic stay [and the co-debtor stay, if applicable] against [describe property. If real property, must list street address and legal description.] (the “Property”). Movant represented to the Court that it had served the motion in accordance with all applicable rules and provided notice of the hearing. As certified by Movant’s counsel, no timely response has been filed. The Court grants default relief.

Accordingly, it is ordered that Movant is granted relief from the automatic stay [and the co-debtor stay, if applicable] to pursue its state law remedies, including foreclosure, repossession and/or with respect to the Property.

ReservedForJudgeSignature

Movant’s counsel’s certification:

Movant’s motion for relief from the stay was served in accordance with applicable bankruptcy rules on _____. I have not received an answer to the motion. Additionally, I have reviewed the docket sheet in this case. The docket sheet reflects that no answer was filed to Movant’s motion for relief from the stay.

COUNSEL FOR MOVANT

Date: _____

Form O-4
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

§
§

Case No.
(Chapter 13)

CHAPTER 13
AGREED ORDER CONDITIONING AUTOMATIC STAY (HOME)
(This Order resolves Docket #____)

1. This Order concerns the note that is secured by the Debtor(s)' home and that is held, directly or in its capacity as agent for the holder, by _____, "Movant". The property that is the subject of this motion is [describe property, including street address and legal description.] (the "Property"). Notices sent pursuant to this Order must be sent to _____ (if to Movant") and to _____ (if to Debtor).

2. By signing below, the Debtor(s) represent to the Court that the Debtor(s):

A. If they are a salaried or wage employee, are currently operating under a wage order or have submitted all information to the chapter 13 trustee for the presentation of a wage order to the Court.

B. If they are not a salaried or wage employee, are currently operating under an automated clearinghouse order or have submitted all information to the chapter 13 trustee for the presentation of an automated clearinghouse order to the Court.

3. The parties stipulate that unpaid amounts due post-petition total \$_____ and that Movant should be awarded attorneys fees and costs in the amount of \$_____ (not to exceed \$650.00), for a total post-petition amount owed of \$_____. This amount will be reduced by any payments previously made by the Debtor(s) that have not been properly credited by Movant. Proof of any such payments must be provided to Movant within 30 days of the date of entry of this Order. Within 30 days after entry of this Order, the Debtor(s) must file a proposed modification of any confirmed plan or must amend any proposed plan to include this amount, with interest at an annual rate of ____%. If the Debtors fail to do so, it is a Final Default under this Order. At the hearing on modification of the plan, the Debtors must be current on all payments to the chapter 13 trustee pursuant to the terms of the proposed modification. If the Debtors fail to do so, it is a Final Default under this Order.

4. The Debtor(s) must:

A. Timely make all regular payments concerning the Property that come due after entry of this Order, including all payments of principal, interest and escrows. Regular payments must be made directly to the Movant (addressed to: _____) or through the Chapter 13 Trustee, depending on the plan confirmed or proposed in this case.

B. Maintain insurance and pay all ad valorem taxes on the property and provide continuous proof of insurance and payment of ad valorem taxes to the holder of the note. This provision does not apply to escrowed taxes and insurance, payment of which is governed by paragraph 4A.

C. Make all payments due to the chapter 13 trustee after the date of this Order, with the amount of such payments being made in the amount required under the proposed modification..

5. If the Debtor(s) fail to comply with paragraph 4 of this Order or make a payment by insufficient check, the Movant must give the Debtor(s) and Debtor(s)' counsel written notice by regular and by certified mail. If the Debtor(s) fail to comply within 10 days of the date that notice was sent, it is a Final Default under this Order. Movant is only required to send two notices of default under this order. If there is a third failure to comply with paragraph 4, it is a Final Default and no further notice of an opportunity to cure must be given.

Form O-4

6. The automatic stay remains in effect until (i) there is a Final Default under this order; (ii) this case is dismissed; or (iii) the Debtor(s) receive their bankruptcy discharge. If the stay terminates because there is a Final Default, the Movant must file a notice of termination of the automatic stay. The Debtor may challenge any notice of termination by filing a motion to set aside the notice of termination. The motion must be filed within 10 days of the filing of the notice of termination. Pending consideration of the motion by the Court, the Movant may proceed with all actions preparatory to foreclosure, but may not consummate a foreclosure of the Property.. Any co-debtor stay terminates at the time that the automatic stay terminates.

SO ORDERED:

ReservedForJudgeSignature

AGREED AND ENTRY REQUESTED:

Debtor

Debtor

Debtor(s)' counsel

Movant's counsel

Form O-5
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

§
§

Case No.
(Chapter 13)

CHAPTER 13
AGREED ORDER CONDITIONING AUTOMATIC STAY (VEHICLE)
(This order resolves docket #_____)

1. This Order concerns the note that is secured by the Debtor(s)' vehicle and that is held, directly or in its capacity as agent for holder, by _____ "Movant". The vehicle is [vehicle description] (the "Property"). Notices sent pursuant to this Order must be sent to _____ (if to Movant") and to _____ (if to Debtor).

2. By signing below, the Debtor(s) represent to the Court that the Debtor(s):

A. If they are a salaried or wage employee, are currently operating under a wage order or have submitted all information to the chapter 13 trustee for the presentation of a wage order to the Court.

B. If they are not a salaried or wage employee, are currently operating under an automated clearinghouse order or have submitted all information to the chapter 13 trustee for the presentation of an automated clearinghouse order to the Court.

3. The parties stipulate that unpaid amounts due post-petition total \$_____ and that Movant should be awarded attorneys fees and costs in the amount of \$_____ (not to exceed the lesser of \$650.00 or the amount of equity in the vehicle), for a total post-petition amount owed of \$_____. This amount will be reduced by any payments previously made by the Debtor(s) that have not been properly credited by Movant. Proof of any such payments must be provided to Movant within 30 days of the date of entry of this Order. Within 30 days of entry of this Order, the Debtor(s) must file a proposed modification of any confirmed plan or must amend any proposed plan to include this amount, with interest at an annual rate of ____%. If the Debtor(s) fail to do so, it is a Final Default under this Order. . At the hearing on modification of the plan, the Debtors must be current on all payments to the chapter 13 trustee pursuant to the terms of the proposed modification. If the Debtors fail to do so, it is a Final Default under this Order.

4. The Debtor(s) must:

A. Timely make all regular payments concerning the Property that come due after entry of this Order. Regular payments must be made directly to the Movant (addressed to : _____) or through the Chapter 13 Trustee, depending on the plan confirmed or proposed in this case.

B. Maintain insurance on the property and provide continuous proof of insurance to the holder of the note.

C. Make all payments due to the chapter 13 trustee after the date of this Order, with the amount of such payments being made in the amount required under the proposed modification..

5. If the Debtor(s) fail to comply with paragraph 4 of this Order or make a payment by insufficient check, the Movant must give the Debtor(s) and Debtor(s)' counsel written notice by regular and by certified mail. If the Debtor(s) fail to comply within 10 days of the date that notice was sent, it is a Final Default under this Order. .Movant is only required to send two notices of default under this order. If there is a third failure to comply with paragraph 4, it is a Final Default and no further notice of an opportunity to cure must be given.

6. The automatic stay remains in effect until (i) there is a Final Default under this order; (ii) this case is dismissed; or (iii) the Debtor(s) receive their bankruptcy discharge. If the stay terminates because there is a Final Default, the Movant must file a notice of termination of the automatic stay. The Debtor may challenge any notice of termination by filing a motion to set aside the notice of termination. The

Form O-5

motion must be filed within 10 days of the filing of the notice of termination. Pending consideration of the motion by the Court, the Movant may repossess the Property but may not consummate a sale of the Property; provided, any repossession undertaken as a consequence of an erroneous Notice of Termination may subject Movant to damages. Any co-debtor stay terminates at the time that the automatic stay terminates.

SO ORDERED:

ReservedForJudgeSignature

AGREED AND ENTRY REQUESTED:

Debtor

Debtor

Debtor(s)' counsel

Movant's counsel

Form O-6
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

§
§

Case No.
(Chapter 7)

CHAPTER 7
AGREED ORDER CONDITIONING AUTOMATIC STAY
(This Order Resolves Docket # ____)

1. This Order concerns the note that is secured by a security interest in the Debtor(s)' property and that is held, directly or as agent for holder, by _____ ("Movant"). The property is [describe property. If real property, include street address and legal description.] (the "Property"). Notices sent pursuant to this Order must be sent to _____ (if to Movant") and to _____ (if to Debtor).

2. The parties have stipulated that unpaid amounts due prepetition total \$_____ and that unpaid amounts due post-petition total \$_____ and that Movant should be awarded attorneys fees and costs in the amount of \$_____ (not to exceed the lesser of \$650.00 or the amount of equity in the property), for a total past due amount owed of \$_____.

3. The Debtors must:

A. Timely make all regular payments to the Movant (addressed to: _____) that come due after entry of this Order including all payments of principal, interest and escrows.

B. If the Property is a vehicle, maintain insurance on the property and provide continuous proof of insurance to the holder of the note. If the property is real property, maintain insurance and pay all ad valorem taxes on the property and provide continuous proof of insurance and payment of ad valorem taxes to the holder of the note. This provision does not apply to escrowed taxes and insurance.

C. Make additional monthly payments of \$_____ per _____ to the Movant as adequate protection payments.

4. The automatic stay remains in effect until the earlier of (i) a default under this Order; (ii) the dismissal of this case; or (iii) if the property is exempt property, the time a discharge is granted or denied in this case.

5. If the Debtor(s) fail to comply with paragraph 3 of this Order or make a payment by insufficient check, the movant must give the Debtor(s) and Debtor(s)' counsel written notice by regular and by certified mail. If the Debtor(s) fail to comply within 10 days of the date that notice was sent, it is a default under this order. Movant is only required to send one notice of default under this order. If there is a second failure to comply with paragraphs 3, it is a default and no further notice of an opportunity to cure must be given. If the stay terminates because there is a default, the Movant must file a notice of termination of the automatic stay. The Debtor may challenge any notice of termination by filing a motion to set aside the notice of termination. The motion must be filed within 10 days of the filing of the notice of termination. Pending consideration of the motion by the Court, the Movant may (i) repossess any Property that is personal property, but may not consummate a sale of the Property; provided, any repossession undertaken as a consequence of an erroneous Notice of Termination may subject Movant to damages; and (ii) proceed with all actions preparatory to foreclosure, but may not consummate a foreclosure of Property that is real property. Any co-debtor stay terminates at the time that the automatic stay terminates.

Form O-6

6. This order neither (i) constitutes a reaffirmation agreement under § 524 of the Bankruptcy Code; nor (ii) extends the automatic stay beyond its statutory term.

7. If the property that is the subject of this order is not exempt property, the Chapter 7 Trustee is bound by the terms of this Order only if the Chapter 7 Trustee signs below.

SO ORDERED:

ReservedForJudgeSignature

AGREED AND ENTRY REQUESTED:

Debtor

Debtor

Debtor(s)' counsel

Movant's counsel

Chapter 7 Trustee